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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ADRIANN GEORGES,
12
13 Plaintiff,
14 v.
15 NOVARTIS PHARMACEUTICALS
CORPORATION,
16 Defendant.

Case No. **2:06-CV-05207-SJO-VBK**

PLAINTIFF ADRIANN GEORGES'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
HER OMNIBUS MOTION IN
LIMINE [NO. 1]; EXHIBIT 1

[Filed concurrently with Notice of
Motion and Omnibus Motion [No. 1];
Supporting Declaration of Molly B.
Weber; and [Proposed] Order]

Hearing Date: November 27, 2012
Time: 9:00 a.m.
Courtroom: 1
Judge: Hon. S. James Otero

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1 Plaintiff Adriann Georges respectfully submits this memorandum in support
2 of her motion *in limine* moving this Court for an order excluding all evidence,
3 references, testimony or argument relating to the various topics set forth below.

4 **A. Any mention or disclosure, whether directly or indirectly, in any**
5 **manner, that Plaintiff is covered by some form of insurance for the incident in**
6 **question.**

7
8 Under the collateral source rule, NJSA 2A: 15-97, a tortfeasor has no right to
9 mitigate damages because of payments or compensation that an injured person has
10 received from an independent sources. *See Thomas v. Toys "R" Us, Inc.*, 282
11 N.J.Super. 569 (App.Div. 1995), cert. denied, 142 N.J. 574 (1995); F.R.E. 403, 411.
12 The tortfeasor has no right to benefit from these collateral payments, and thus
13 defendant should not be able to reference those types of compensation at trial in an
14 effort to reduce damages assessed by the jury. Such fact is entirely immaterial to
15 any issue in this case and any mentioning or inference thereof, directly or indirectly,
16 in any manner, will be harmful or unjustly prejudicial to the Plaintiff. *See F.R.E.*
17 *403*. Any necessary offset can be effectuated by your Honor post-judgment if
18 necessary. This motion was previously brought in a similar case and granted by
19 that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al. v. Novartis*
20 *Pharms. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct. New Jersey).

21 **B. Any statement that a verdict for Plaintiff will adversely impact**
22 **pharmaceutical companies' incentive/ability to develop new medications.**
23

24 Such argument is irrelevant, as it does not make the existence of any
25 consequential fact more or less probable. *See F.R.E. 401-402*. Instead, this
26 argument constitutes unsupported speculation regarding a very remote topic, and is
27 likely to involve matters outside the record, including hearsay and double hearsay.
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1 See F.R.E. 802. Any comment on the possible effects of an award of damages in
2 this case would confuse and mislead the jury and waste the court's time. See F.R.E.
3 403.

4 Moreover, such argument is highly prejudicial and calculated to inflame the
5 jury. See F.R.E. 403. Such argument would suggest to the jury that if they were to
6 side with Plaintiff, pharmaceutical companies would stop developing new
7 medications which would be detrimental to people's health, including but not limited
8 to their own. That is an inflammatory claim that has no place in litigation,
9 especially in light of the current debate on healthcare reform. For these reasons,
10 this argument should not be mentioned or referenced in front of the jury as it will
11 greatly prejudice Plaintiff. This motion was previously brought in a similar case
12 and granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al.*
13 *v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct.
14 New Jersey).

15
16 **C. Any comment or inference, or submitting any evidence, testimony**
17 **or documents tending to suggest in any way that any award of damages in this**
18 **case will adversely affect the ability of any member of the jury to purchase, or**
19 **have available medications in the future, or affect the cost thereof, or have any**
20 **adverse effect on the medical, or health products available to individuals or**
21 **industries in the United States or worldwide.**

22 Such argument is irrelevant, as it does not make the existence of any
23 consequential fact more or less probable. See F.R.E. 401-402. Instead, this
24 argument constitutes unsupported speculation regarding a very remote topic, and is
25 likely to involve matters outside the record, including hearsay and double hearsay.
26 See F.R.E. 802. Any comment on the possible effects an award of damages in this
27 case would confuse and mislead the jury and waste the court's time. See F.R.E.
28 403.

1 Moreover, such argument is highly prejudicial and calculated to inflame the
2 jury. *See* F.R.E. 403. Such argument would suggest to the jury that they should
3 side with Novartis if they do not want the price of medications and healthcare to
4 rise, which is an inflammatory claim that has no place in litigation, especially in
5 light of the current debate on healthcare reform. For these reasons, this argument
6 should not be mentioned or referenced in front of the jury as it will greatly
7 prejudice Plaintiff. This motion was previously brought in a similar case and
8 granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al. v.*
9 *Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct. New
10 Jersey).

11
12 **D. Any comment or personal anecdote from any witness or lawyer for**
13 **the Defendant about themselves, or family members who have used Aredia,**
14 **Zometa, or any type of bisphosphonate.**

15 Such evidence is irrelevant, hearsay, and undeniably prejudicial. *See* F.R.E.
16 402-403. These emotional stories cannot be verified and will inappropriately sway
17 the sympathies of the jury. This motion was previously brought in a similar case
18 and granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer et al.*
19 *v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct.
20 New Jersey).

21 **E. Any mention of a purported “litigation crisis”, “lawsuit crisis”,**
22 **“lawsuit abuse”, or similar terms or phrases.**

23 Such argument is irrelevant, as it does not make the existence of any
24 consequential fact more or less probable. *See* F.R.E. 401-402. Any comment
25 would confuse and mislead the jury and waste the court’s time. *See* F.R.E. 403.
26 Moreover, such argument is highly prejudicial and calculated to inflame the jury.
27 *See* F.R.E. 403.
28

1 Such an argument by the defense would be akin to commenting on the
2 legitimacy of this and other lawsuits, suggesting to the jury that this lawsuit is
3 groundless or part of some societal problem. Such argument would suggest to the
4 jury that siding with Novartis in this case would somehow make up for a general
5 overabundance of lawsuits brought in this country, which is an inflammatory claim
6 that has no place in litigation. Such information would only be used by Defendant
7 in an attempt to play to the jurors' opinions on tort reform, or lawyers as
8 professionals. For these reasons, this Court should preclude this argument from
9 being mentioned or referenced in front of the jury as it will cause great prejudice to
10 Plaintiff. This motion was previously brought in a similar case and granted by that
11 court. *In re: Aredia® and Zometa® Litigation (Bessemer et al. v. Novartis Pharms.*
12 *Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup. Ct. New Jersey).

13
14 **F. Any comment, evidence, testimony, inference, or document**
15 **mentioning that state warning defect or failure-to-warn laws pressure drug**
16 **manufacturers to add unsubstantiated, false, or invalid warnings in order to**
avoid lawsuits.

17 Such argument is irrelevant, as it does not make the existence of any
18 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this
19 argument constitutes unsupported speculation, and is likely to involve matters
20 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any
21 comment on these matters would confuse and mislead the jury and waste the court's
22 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and
23 calculated to inflame the jury. *See* F.R.E. 403.

24 Further, such information would only be used by Defendant in an attempt to
25 play to the jurors' opinions on tort reform, or lawyers as professionals. It is
26 unnecessary information that will only waste the court's time and confuse the jury.
27 For these reasons, this argument or comment must not be mentioned or referenced
28

1 in front of the jury as it will greatly prejudice Plaintiff. This motion was previously
2 brought in a similar case and granted by that court. *In re: Aredia® and Zometa®*
3 *Litigation (Bessemer et al. v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case
4 No. 278 MT) (Sup. Ct. New Jersey).

5
6 **G. Any comment, evidence, testimony, inference, or document**
7 **mentioning that state tort law undercuts the FDA's mission to provide only**
8 **scientifically valid warnings.**

9 Such argument is irrelevant, as it does not make the existence of any
10 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this
11 argument constitutes unsupported speculation, and is likely to involve matters
12 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any
13 comment on these matters would confuse and mislead the jury and waste the court's
14 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and
15 calculated to inflame the jury. *See* F.R.E. 403.

16 Further, such information would only be used by Novartis in an attempt to
17 play to the jurors' opinions on tort reform, or lawyers as professionals. It is
18 unnecessary information that will only waste the court's time and confuse the jury.
19 For these reasons, this argument or comment must not be mentioned or referenced
20 in front of the jury as it will greatly prejudice Plaintiff. This motion was previously
21 brought in a similar case and granted by that court. *In re: Aredia® and Zometa®*
22 *Litigation (Bessemer et al. v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case
23 No. 278 MT) (Sup. Ct. New Jersey).

24
25 **H. Any comments or argument that the absence of any evidence of**
26 **FDA sanction is proof of full and timely compliance with FDA regulations.**

27 In a previous trial for a case similar to the instant case, in closing, counsel
28 argued:

1 And we think that there is no evidence whatsoever in this record--in
2 fact, the evidence is all in Novartis's favor that Novartis has never
3 been cited for any problem with respect to the regulatory requirements,
labeling and otherwise, included for the marketing and use of Zometa
in cancer patients in the United States.

4 And there has been no testimony from anyone in this trial that even
5 suggests that the FDA was unhappy with Novartis's pharmacovigilance
6 compliance, as you heard one of the witnesses refer to. That witness
was Dr. Parisian.

7 *Stevens* trial transcript, Closing Statement of Joe Hollingsworth, Esq.,
1720:3-14, *Stevens v. Novartis Pharms. Corp.*, No. DV-08-100 (Mont. 4th Jud. Dist.
8 Ct. Oct. 20, 2009) (attached as **Exhibit 1**).

9 Such argument is irrelevant, as it does not make the existence of any
10 consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this
11 argument constitutes unsupported speculation, and is likely to involve matters
12 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any
13 comment on these matters would confuse and mislead the jury and waste the court's
14 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and
15 calculated to inflame the jury. *Id.* This motion was previously brought in a similar
16 case and granted by that court. *In re: Aredia® and Zometa® Litigation (Bessemer*
17 *et al. v. Novartis Pharms. Corp.)*, MID-L-1835-08-MT (Case No. 278 MT) (Sup.
18 Ct. New Jersey).

19
20 **I. Any comment or testimony concerning any current clinical trials**
21 **or expansion of its indications.**

22 Mrs. Georges ceased taking any bisphosphonate in 2005. No indication
23 requested or approved after this date has any bearing whatsoever on the facts at
24 issue in this case. Such argument is irrelevant, as it does not make the existence of
25 any consequential fact more or less probable. *See* F.R.E. 401-402. Instead, this
26 argument constitutes unsupported speculation, and is likely to involve matters
27 outside the record, including hearsay and double hearsay. *See* F.R.E. 802. Any
28 comment on these matters would confuse and mislead the jury and waste the court's

1 time. *See* F.R.E. 403. Moreover, such argument is highly prejudicial and
2 calculated to inflame the jury. *Id.*

3
4 **CONCLUSION**

5 For the foregoing reasons, Plaintiff Adriann Georges respectfully requests
6 that this Court preclude discussion of the issues addressed herein by Novartis, their
7 witnesses, and their counsel at all times the jury is present.

8
9 DATED: October 23, 2012

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10 /s/ John A. Girardi

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